IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 5TH NOVEMBER 2007 / 14TH KARTHIKA 1929

Bail Appl..No. 6339 of 2007()

CR.NO.170/70 OF KUDIYANMALA POLICE STATION, KANNUR.

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PETITIONER/ACCUSED

T.A.JOSEPH, S/O. ABRAHAM, AGED 37 YRS,
K.S.R.T.C. CONDUCTOR, MANDALAM P.O.,
NADUVIL AMSOM, TALIPARAMBA TALUK, KANNUR DISTRICT.

BY ADV. SRI.V.A.SATHEESH
SRI.V.T.MADHAVANUNNI

RESPONDENTS: COMPLAINANT

STATION HOUSE OFFICER,
KUDIYANMALA POLICE STATION, KANNUR DISTRICT.
(CRIME NO.170/2007 OF KUDIYANMALA POLICE
STATION, KANNUR DISTRICT), REP. BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 05/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 6339 OF 2007

Dated this the 5th day of November, 2007

ORDER

Application for anticipatory bail. The petitioner is the Conductor of a K.S.R.T.C. bus. The crux of the allegations against him is that he picked up a quarrel with one of the passengers and attacked him with a dangerous weapon. The allegation is that he used the electronic ticket machine which he had in his possession to mount the attack on the victim. About the same incident, a case and counter has been registered. As against the de facto complainant/the alleged victim herein, a crime was registered for the non-bailable offence punishable under Sec.353 of the IPC. As against the petitioner, the allegation is raised under Sec.326 of the IPC. The victim is alleged to have suffered a fracture of the 5th meta-carpel. Investigation is in progress. The petitioner

apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He is the victim of aggression. The allegations would reveal that return of money due from the Conductor of the bus a couple of days earlier was demanded on the date of the incident and that is how the incident started. It is, in these circumstances, prayed that anticipatory bail may be granted to the petitioner.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that there are absolutely no circumstances justifying or warranting the invocation of the discretion under Sec.438 of the Cr.P.C. This is a fit case where the petitioner must surrender before the Investigating Officer or the learned Magistrate and then seek regular bail in the ordinary course, submits the learned Public Prosecutor.

4. Having considered all the relevant inputs, I am unable to perceive any features in this case which would justify or warrant the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C. This, I agree with the learned Public Prosecutor, is an eminently fit case where the petitioner must surrender before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the

ordinary course.

5. In the result, this bail application is dismissed; but with the observation that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge